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Attorneys for Defendant
AutoZone, Inc.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

MATTHEW WATKINS, on behalf of
himself and all others similarly situated,

Plaintiff,

v.

AUTOZONE, INC., a Nevada
corporation, and DOES 1 through 50,
inclusive

Defendants.

CASE NO. 08-CV-1509-H-AJB

Assigned to: Honorable Marilyn L. Huff

CLASS ACTION

**NOTICE OF MOTION AND MOTION
TO DISMISS FOR LACK OF
PERSONAL JURISDICTION**

Hearing

Date: September 22, 2008
Time: 10:30 a.m.
Dept.: 13

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on September 22, 2008 at 10:30 a.m., or as
3 soon thereafter as the matter may be heard, before the Honorable Marilyn L. Huff of the
4 United States District Court, Southern Division, Edward J. Schwartz Federal Building,
5 Suite 4290, 880 Front Street, San Diego, California, Courtroom 13, Defendant AutoZone,
6 Inc. will and does hereby move pursuant to rule 12(b)(2) of the Federal Rules of Civil
7 Procedure for an order dismissing Plaintiff's Class Action Complaint on the grounds that
8 personal jurisdiction over AutoZone, Inc. does not exist as that company does not own or
9 operate AutoZone retail locations, or otherwise do business, in California.

10 This motion is based on this Notice of Motion and Motion, the
11 accompanying Memorandum of Points and Authorities, the Declaration of Brian
12 Hutchinson filed concurrently herewith, the contents of the file in this action, and
13 whatever and further evidence and argument is presented at the hearing of this motion.
14

15 DATED: August 22, 2008

Respectfully submitted,

16 LATHAM & WATKINS LLP

17 Belinda S Lee
18 Courtney E. Vaudreuil
19 Nikoo N. Berenji

/s/ Courtney E. Vaudreuil

20 By

Courtney E. Vaudreuil
Attorneys for Defendant
AUTOZONE, INC.
E-mail: courtney.vaudreuil@lw.com

PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to this action. My business address is Latham & Watkins LLP, 355 South Grand Avenue, Los Angeles, CA 90071-1560.

On **August 22, 2008**, I served the following document described as:

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by serving a true copy of the above-described document in the following manner:

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James R. Patterson, Esq. Cary A. Kinkead, Esq. HARRISON, PATTERSON & O'CONNOR LLP 402 West Broadway, 29 th Floor San Diego, CA 92101 Telephone: (619) 756-6990 Facsimile: (619) 756-6991 email: jpatterson@hpolaw.com ckinkead@hpolaw.com	Attorneys for Plaintiff Matthew Watkins

1 I declare that I am employed in the office of a member of the Bar of, or
2 permitted to practice before, this Court at whose direction the service was made
3 and declare under penalty of perjury under the laws of the State of California that
4 the foregoing is true and correct.

5 Executed on **August 22, 2008**, at Los Angeles, California.

6 /s/ Nancy Renteria

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8 Nancy Renteria
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CLASS ACTION

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Matthew Watkins alleges that AutoZone, Inc. violated California Civil Code section 1747.08, Business and Professions Code section 17200 et seq., and the California Constitution by purportedly requesting personal information from customers purchasing items with a credit card at AutoZone retail locations in California. Because AutoZone, Inc. neither owns nor operates any retail locations in California, it hereby moves to dismiss Plaintiff's Complaint for lack of personal jurisdiction pursuant to Federal Rules of Civil Procedure rule 12(b)(2).

II. PROCEDURAL BACKGROUND

On July 15, 2008, Plaintiff filed his Complaint in the Superior Court of the State of California for the County of San Diego, Civil Case No. 37-2008-00087672-CU-BT-CTL. On August 15, 2008, AutoZone, Inc. removed the case to this Court pursuant to 28 U.S.C. §1441. This Court has original jurisdiction pursuant to 28 U.S.C. §1332(d)(2).

III. ARGUMENT

A. AutoZone, Inc. Does Not Have Minimum Contacts With California

Exercise of personal jurisdiction over an out-of-state defendant "comports with due process when the out-of-state defendant maintains 'certain minimum contacts with [the forum state] such that maintenance of the suit does not offend traditional notions of fair play and substantial justice.'" *Northwest Healthcare Alliance Inc. v. Healthgrades.Com, Inc.*, 50 Fed.Appx. 339, 340 (9th Cir. 2002) (citing *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 315 (1945)). No such contacts exist here.

Plaintiff states in his Complaint upon "information and belief" that AutoZone, Inc. is a Nevada corporation with its principal place of business in California, and that AutoZone, Inc. operates AutoZone retail locations in California. Complaint ¶ 9. Plaintiff is mistaken. AutoZone, Inc. is a Nevada corporation with its principal place of business in Tennessee. Hutchinson Decl. ¶ 2. AutoZone, Inc. does not own or operate

the AutoZone retail location where Plaintiff made his purchase.¹ *Id.* at ¶ 4; *see also* Complaint ¶ 13. Nor does AutoZone, Inc. own or operate any other retail location within the State of California. Hutchinson Decl. ¶ 4. In 2004, AutoZone Inc. transferred ownership of its California retail locations to AutoZone Parts, Inc., and is currently a holding company that owns stock in various subsidiaries. *Id.* at ¶¶ 3-4. AutoZone, Inc. does not currently own or operate any retail locations in California nor conduct any other business in California. *Id.* at ¶ 4.

B. There Is No Basis For Finding General Or Specific Jurisdiction

When personal jurisdiction is challenged, the burden shifts to the plaintiff to show why the exercise of jurisdiction is proper. *See Doe v. Unocal Corp.*, 248 F.3d 915, 922 (9th Cir. 2001).

There are two types of personal jurisdiction: general and specific. *See Reebok Int'l, Ltd. v. McLaughlin*, 49 F.3d 1387, 1391 (9th Cir. 1995), cert. denied, 516 U.S. 908, 116 S.Ct. 276, 133 L.Ed.2d 197 (1995). “The basic rule is that the defendant must have certain minimal contacts with the forum such that maintenance of the suit does not offend traditional notions of fair play and substantial justice.” *See Data Disc., Inc. v. Systems Tech. Assocs., Inc.*, 557 F.2d 1280, 1287 (9th Cir. 1977). The standard for establishing general jurisdiction is “‘fairly high,’ and requires that the defendant’s contacts be of the sort that approximate physical presence.” *Bancroft & Masters v. Augusta Nat’l*, 223 F.3d 1082, 1086 (9th Cir. 2000). “This is an exacting standard, as it should be, because a finding of general jurisdiction permits a defendant to be haled into court in the forum state to answer for any of its activities anywhere in the world.” *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 801 (9th Cir. 2004).

Here, AutoZone, Inc. is neither incorporated nor headquartered in California. Hutchinson Decl. ¶ 2. AutoZone, Inc. does not operate retail stores in

¹ Because AutoZone, Inc. does not own or operate the retail store where Plaintiff made his purchase, or any other California AutoZone retail location, Plaintiff’s substantive claims are also without merit.

1 California or do any other business in California. *Id.* at ¶ 4. In the absence of any such
2 contacts, Plaintiff cannot establish the requisite “approximate physical presence” of
3 AutoZone, Inc. in California. Thus, the Court cannot exercise general jurisdiction over
4 AutoZone, Inc.

5 Where a defendant’s contacts are insufficient to establish general
6 jurisdiction, a forum may exercise “specific jurisdiction.” *Yahoo! Inc. v. La Ligue Contre*
7 *Le Racisme*, 433 F.3d 1199, 1205 (9th Cir. 2006). In order to meet this burden, Plaintiff
8 must show that: (1) AutoZone, Inc. “purposefully availed itself of the privilege of
9 conducting activities in the forum state invoking the benefits and protections of the forum
10 state’s laws”; (2) Plaintiff’s claim arises from AutoZone, Inc.’s “forum-related
11 activities”; and (3) exercise of jurisdiction over AutoZone, Inc. is reasonable. *See*
12 *Ballard v. Savage*, 65 F.3d 1495, 1498 (9th Cir. 1995). The plaintiff bears the burden of
13 satisfying the first two prongs, and if he fails to do so, personal jurisdiction is not
14 established. *See Schwarzenegger*, 374 F.3d at 802.

15 Plaintiff is unable to meet his burden because AutoZone, Inc. does not
16 “conduct activities” within California. Moreover, Plaintiff cannot meet the second prong
17 because AutoZone, Inc. does not own or operate retail locations in California and
18 Plaintiff’s claims are related to retail transaction at such stores. It would be patently
19 unreasonable to allow Plaintiff’s claims against AutoZone, Inc. to proceed.

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1 **IV. CONCLUSION**

2 For the foregoing reasons, AutoZone, Inc. respectfully requests that the
3 Court grant its motion to be dismissed from this case.

4
5 Dated: August 22, 2008

Respectfully submitted,

6 LATHAM & WATKINS LLP

7 Belinda S Lee

Courtney E. Vaudreuil

8 Nikoo N. Berenji

/s/ Courtney E. Vaudreuil

9 By

10 Courtney E. Vaudreuil
11 Attorneys for Defendant
12 AutoZone, Inc.
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PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to this action. My business address is Latham & Watkins LLP, 355 South Grand Avenue, Los Angeles, CA 90071-1560.

On **August 22, 2008**, I served the following document described as:

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James R. Patterson, Esq. Cary A. Kinkead, Esq. HARRISON, PATTERSON & O'CONNOR LLP 402 West Broadway, 29 th Floor San Diego, CA 92101 Telephone: (619) 756-6990 Facsimile: (619) 756-6991 email: jpatterson@hpolaw.com ckinkead@hpolaw.com	Attorneys for Plaintiff Matthew Watkins

1 I declare that I am employed in the office of a member of the Bar of, or
2 permitted to practice before, this Court at whose direction the service was made
3 and declare under penalty of perjury under the laws of the State of California that
4 the foregoing is true and correct.

5 Executed on **August 22, 2008**, at Los Angeles, California.

6 /s/ Nancy Renteria

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8 Nancy Renteria
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7 Attorneys for Defendant
AUTOZONE, INC.

8 UNITED STATES DISTRICT COURT
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10 SOUTHERN DISTRICT OF CALIFORNIA

11 MATTHEW WATKINS, on behalf of
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CASE NO. 08-CV-1509-H-AJB

Assigned to: Honorable Marilyn L. Huff

CLASS ACTION

DECLARATION OF BRIAN HUTCHISON
IN SUPPORT OF DEFENDANTS' NOTICE
OF MOTION AND MOTION TO DISMISS
FOR LACK OF PERSONAL
JURISDICTION

Hearing

Date: September 22, 2008
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Dept.: 13

DECLARATION OF BRIAN HUTCHISON

I, BRIAN HUTCHISON, hereby declare and testify as follows:

1. I am executing this declaration on behalf of defendant AutoZone, Inc. I am employed by AutoZoners, LLC (an affiliate of AutoZone, Inc.) as a Manager of Income Tax. I am responsible for AutoZone, Inc.'s compliance with, and accounting for, federal, state and international income tax matters. I make this declaration of my personal and firsthand knowledge, information, and belief and if called upon could testify competently under oath hereto.

2. AutoZone, Inc. is a Nevada corporation with its principal place of business in Tennessee.

3. On February 14, 2004, AutoZone, Inc. transferred ownership of all its California AutoZone retail locations to AutoZone Parts, Inc.

4. AutoZone, Inc. is a holding company that only owns stock in its subsidiaries. It does not currently own or operate any retail locations in California nor conduct any other business in California.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 22nd of August 2008, in Memphis, Tennessee.



Brian Hutchison

PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to this action. My business address is Latham & Watkins LLP, 355 South Grand Avenue, Los Angeles, CA 90071-1560.

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/S/ Nancy Renteria

Nancy Renteria